IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9161 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANIL @ CHITER DATTATRAI SHIDE

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

UR BHATT learned AGP for respondent nos.1 to 3

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 11/05/2000 (Annexure - A) passed by

respondent No.2 in respect to detenu - petitioner in exercise of his powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention. It is the case of detaining authority that the petitioner-detenu is " a dangerous person " within the meaning of section 2(c) of the Act, and further that activities of the petitioner are prejudicial to the maintenance of the public order.

3. To arrive at a subjective satisfaction, the detaining authority has placed reliance on four cases registered in Raopura and Navapura Police Stations for offences punishable under Indian Penal Code which are referred to in the grounds of detention. He has also placed reliance on statements of three witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. That three statements were verified by the detaining authority on 16/04/2000 and the order of detention dated 11/05/2000 came to be passed against the detenu which is challenged in this writ petition.

4. Though rule has been served upon each respondent, the respondents have not filed affidavit-in-replies in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.K. U. Mishra, learned advocate for the petitioner has argued that out of four cases, last case bearing C.R.No.I-85/2000, was registered in Raopura Police Station, on 03/04/2000. All the four cases are pending before the trial Court. He has also argued that after lodging the last case on 03/04/2000 the detaining authority has passed an order of detention on 11/05/2000. Thus, there is a delay in passing an order. The question does not arise for delay, but the question is with regard to explanation of delay as to why the order has been passed after about one month and eight days. Herein this case, the detaining authority has not explained the delay. Mr.K. U. Mishra, learned advocate for the petitioner has cited an authority of ELESH NANDUBHAI PATEL v. C. P. SINGH, COMMISSIONER OF POLICE, AHMEDABAD CITY & ORS. reported in 1997 (2) GLR 1375, wherein it has been held that unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself.

6. In view of this legal position, in absence of explanation from side of detaining authority for passing an order, after about one month and eight days, the order is not proximate and, therefore, it is bad in law and illegal.

7. In view of what isstated hereinabove,this writ petition is allowed. The impugned order of detention dated 11/05/2000 passed by respondent No.2 in respect to detenu is set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)
(vrpanchal)